



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18379622

Date: NOV. 02, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the petition, concluding that USCIS' consent to SIJ classification was not warranted, and denied a subsequent motion to reopen and reconsider as untimely filed. On appeal, the Petitioner asserts his eligibility for SIJ classification and argues the delay in filing the motion was reasonable. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency, or an individual appointed by the state agency or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

II. ANALYSIS

In 2017, when the Petitioner was 18 years old, a Probate and Family Court in Massachusetts, issued a Findings and Judgment (SIJ order). Based on this order the Petitioner filed an SIJ petition in May 2017. In a decision dated November 21, 2018, the Director denied the SIJ petition, concluding that the Petitioner was 18 and had attained majority when the Massachusetts SIJ order was issued and that the court order was not valid for the purpose of establishing the Petitioner's eligibility for SIJ classification. The Petitioner did not file an appeal at that time.

On October 9, 2020, the Petitioner filed a motion to reopen and reconsider the Director's decision, conceding that the filing was past the 30-day deadline, but arguing that following passage of Mass. Gen. Laws Ch. 119, § 39M in 2018 and our October 2019 interpretive decision¹ he petitioned the court for a new judgment. The Petitioner maintained that on [REDACTED] 2019, the court issued an amended order on a Complaint for Dependency, but he then moved to have a *nunc pro tunc* date amended, which the court allowed on [REDACTED] 2020. The Petitioner claimed that in March 2020, Massachusetts ordered businesses closed due to COVID-19, he lost his job, and he could not then pay to file a motion on the Director's decision.

In a declaration provided with the motion the Petitioner stated that did not appeal the Director's decision because he could not afford it and was saving money to file a motion to reopen when the pandemic caused the restaurant where he worked to close, but in October 2020 he got his job back so was able afford the filing fee.

In dismissing the motion, the Director observed that the SIJ petition was filed on May 11, 2017, and denied on November 21, 2018, but the motion to reopen and reconsider was filed on October 9, 2020, so was not submitted within 33 days of the decision. The Director found the delay not to be reasonable and beyond the Petitioner's control.

On appeal the Petitioner asserts that per regulation USCIS can excuse late-filed motions for a reasonable delay beyond the control of petitioners and that because of a change in the law, the new evidence he obtained in February 2020, and the pandemic an eight-month delay from obtaining the amended order until filing the motion is reasonable. With the appeal the Petitioner submits the motion before the court to modify the Judgment of Dependency, which the judge signed as allowed on February 13, 2020. He also submits a copy of the Massachusetts state emergency declaration and contends that USCIS recognized COVID-19 issues to allow other filing extensions.

The sole issue before us is whether the Director correctly denied the Petitioner's motion to reopen and reconsider as untimely. Motions to reopen or reconsider must be filed within 30 days, or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). The untimely filing of a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority extended to an untimely filed motion to reconsider. *See id.* The petitioner bears the burden of establishing eligibility by a preponderance of the evidence.

The Director denied the SIJ petition in November 2018, yet the Petitioner did not file the motion to reopen and reconsider until October 2020, nearly two full years following the Director's denial. Although the Petitioner refers to our decision interpreting the change in Massachusetts law that became effective in July 2018, our decision was issued in October 2019 and the USCIS Policy Manual updated in November 2019, yet the Petitioner did not file the motion to reopen and reconsider with the Director for another full year, in October 2020. The Petitioner also refers to USCIS late-filing allowances on account of the COVID-19 pandemic. USCIS considered appeals and motions filed on

¹ The Petitioner cites our decision in *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019). In November 2019 the USCIS Policy Manual was updated to mirror the policy guidance as outlined in the adopted decision. In June 2022 *Matter of A-O-C-* was rescinded as an adopted decision and superseded by the USCIS Policy Manual.

Form I-290B, Notice of Appeal or Motion, as timely if filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021. That allowance was later extended to 90 days where the underlying USCIS decision was issued between November 1, 2021, and July 25, 2022.² The Director's decision upon which the Petitioner filed the motion was issued in November 2018, so it does not fall within the effective dates.

The Petitioner's explanations are insufficient to excuse the untimely filing of his motion to reopen and reconsider. Although USCIS may excuse the untimely filing of the Petitioner's motion to reopen if he shows that the delay in filing was reasonable and beyond his control, he has not satisfied his burden to make such a showing. *Id.*

ORDER: The appeal is dismissed.

² <https://www.uscis.gov/news/alerts>.